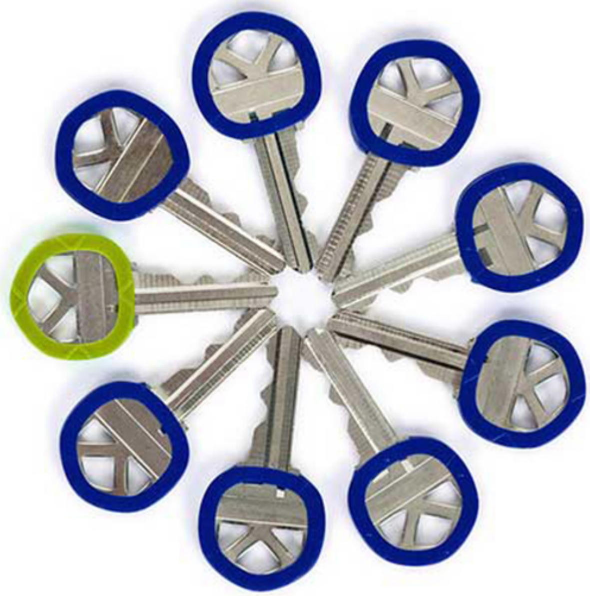

In this issue:

Federal Claims Court Rules on Failure to Meet Reasonable Cause in Payroll Tax Obligations

In *All Stacked Up Masonry, Inc. v. United States*,[1] the Court of Federal Claims concluded that no reasonable cause existed to excuse penalties for failure to meet payroll tax obligations.

All Stacked Up Masonry, Inc. (hereinafter "Taxpayer") filed suit in the Court of Federal Claims seeking refund of $95,590.67 in penalties and interest assessed against Taxpayer for failure to file payroll tax documents and for failure to make timely payroll tax deposits. Taxpayer argued that these failures should be excused due to reasonable cause and, therefore, the penalties and interest should be refunded. The basis of Taxpayer's assertion of reasonable cause involves an injury suffered by its owner, which injury caused Taxpayer to delegate tax preparation responsibilities to an employee, who could not properly operate the tax preparation software. The United States filed a motion to dismiss arguing the penalties were properly assessed and that taxpayer did not demonstrate reasonable cause.

[1] *All Stacked Up Masonry, Inc. v. United States*, No. 20-161T (Fed. Cl. Oct. 22, 2020)

The Court began its analysis by reviewing the case-law and authorities governing the reasonable cause standard. The Court observed that a taxpayer can demonstrate reasonable cause by demonstrating that the taxpayer exercised ordinary business care and prudence but was nevertheless unable to file the return or pay the tax within the time prescribed.[2] The Court also noted that the taxpayer bears a heavy burden of demonstrating both reasonable cause and the absence of willful neglect.[3]

The Court started its analysis by stating that a taxpayer's failure to file, deposit, or pay must be due to reasons beyond the taxpayer's control, and not just carelessness, in order to qualify as reasonable cause. In addition, the Court observed that it is a well-established rule pursuant to Supreme Court precedent in *Boyle* that a taxpayer cannot delegate its tax obligations as a matter of law. While a taxpayer may choose to do so as a matter of business practice, this does not relieve the taxpayer of the obligation.[4] Applying *Boyle* to this case, the Court determined that as a matter of law the retention of an employee or software to prepare and remit tax filings and make deposits did not constitute "reasonable cause."

After establishing that Taxpayer could not excuse its failure to meet its tax obligation by invoking reliance on its agents, the Court addressed Taxpayer's argument that user error while using payroll software constituted reasonable cause. The Court concluded that it cannot, citing precedent that utilizing tax preparation software does not alleviate a taxpayer's duty to meet tax deadlines.[5] Furthermore, the Court reasoned that inability to operate tax preparation software was not consistent with ordinary care and business prudence.

Finally, the Court turned to Taxpayer's argument that the owner's injury constituted reasonable cause. Taxpayer relied on the Internal Revenue Manual provision, which states that serious illness experienced by a taxpayer or taxpayer's immediate family may establish reasonable cause. However, the Court observed that the corporation did not suffer a disability, but rather the corporation's owner. The Court pointed out that the disability contemplated in *Boyle* must make compliance virtually impossible and the fact that the taxpayer continued business operations notwithstanding the owner's injury cannot establish reasonable cause.[6] Thus, the Court found that Taxpayer made no factual allegations to support a claim of corporate disability caused by the owner's injury.[7]

Fiscal Year 2021 Focus Guide released by LB&I

The IRS' Large Business & International division (hereinafter "LB&I") released its Fiscal Year 2021 Focus Guide.[8] The Focus Guide is LB&I's annual publication that outlines its strategic vision and goals for the upcoming fiscal year. In its Fiscal Year 2021 Focus Guide, LB&I reaffirms its commitment to the IRS' strategic goals for the period 2018-2022, which include: empowering all taxpayers to meet their tax obligations; protecting the integrity of the tax system by encouraging compliance through administration and enforcement; collaborating with external partners to improve tax administration; cultivating a well-equipped and diverse workforce; advancing the role of data to improve operations; and increasing effectiveness in IRS operations.

The Focus Guide also features a message from the LB&I Commissioners' Office. The Commissioners' Office message addresses the challenges created by the COVID-19 pandemic. The message highlights the work the IRS has done to transition to a telework environment. Despite the challenges, the Commissioners' Office asserts that LB&I is in a strong position as IRS moves into a new fiscal year, while acknowledging that the uncertainties created by the pandemic are affecting it like all organizations in both the public and private sectors. The message emphasizes that despite these challenges, the Commissioners' Office is committed to focusing on the bigger picture and its long-term

---

[2] Treas. Reg. § 301.6651-1(c)(1)
[3] *United States v. Boyle*, 469 US 245, 249 (1985)
[4] *Id.* at 250
[5] *In re Craddock*, 149 F.3d 1249 (10th Cir. 1998)
[6] *Stine v. United States*, 106 Fed. Cl. 586, 592 (2012)
[7] Even if Taxpayer could demonstrate "reasonable cause" for failures to file, deposit, and pay its taxes, the Court alternatively found that part of its claim was excluded from the statutorily allowed look-back period under section 6511(b).
[8] IRS Pub. No. 5319, Cat. No. 71924B (Oct. 9, 2020), https://www.irs.gov/pub/irs-pdf/p5319.pdf

goals. In addition to implementing new initiatives, the Focus Guide reiterates that LB&I is committed to working to improve its longstanding goals: launching new campaigns; improving the Compliance Assurance Process; implementing Bipartisan Budget Act partnership audit procedure changes and delivering in-person coaching.

The message from the Commissioner' Office also focuses on new key initiatives that LB&I will implement in the upcoming fiscal year. According to the Focus Guide, LB&I will continue to increase its data analytic capabilities and employ these capabilities to identify high risk taxpayers and abusive tax schemes. It will prioritize these efforts in the high-income and pass-through sectors. LB&I will continue its work to implement the Taxpayers First Act.

In addition, the Commissioner's Office outlines a number of internal goals that LB&I will strive toward in Fiscal Year 2021. LB&I expects to continue to improve its technology. It will introduce accounting for Direct Compliance Time to improve its ability to make informed decisions about the amount of direct examination time that employees allocate to each of its various compliance programs. LB&I also plans to continue to increase the size of its workforce and offer new coaching and mentoring. It aims to foster an inclusive environment and focus on employee well-being during these challenging times.

In addition to the Commissioners' Message, the Focus Guide featured a bullet point summary of a number of LB&I's important strategic goals for fiscal year 2021. These strategic goals were divided into six categories: Compliance Activities; Major Program Priorities; Workforce Tools and Opportunities; Communication and Collaboration; Staffing; and Equity, Diversity, and Inclusion. Under each of these headings, the Focus Guide provides details about the major areas and initiatives that LB&I will focus on in the new fiscal year.

LB&I highlights a few major goals in its efforts to strengthening compliance activities. The Focus Guide emphasizes the importance of improving case selection to focus on taxpayer noncompliance. LB&I will use Portfolio Management to direct its resources more efficiently. In addition, LB&I noted that expanding coverage of pass-through entities, high wealth taxpayers and high-income individual are top priorities and that LB&I is committed to using analytics to measure success and target abusive transactions and promoter schemes.

The second major strategic goal on the Focus Guide is implementing "Major Program" priorities. These include ensuring taxpayer compliance with the provisions of the Tax Cuts and Jobs Act. In addition, LB&I will closely monitor and respond to the impact of the Coronavirus Aid, Relief and Economic Security Act on LB&I taxpayers and will continue to work to improve the Large Corporate Compliance Program and the Compliance Assurance Process. Finally, LB&I will work to implement the changes adopted in the Taxpayer First Act.

In the remaining four sections of the Focus Guide, LB&I lists a number of its internal goals. In its section on expanding workforce tools and opportunities, LB&I reiterated its goal of fostering a coaching culture to develop employees and enhance organizational performance. The Focus Guide noted that LB&I will also focus on providing training, tools, and resources to its employees. In its section on prioritizing communication and collaboration, LB&I articulated its goal of maintaining open communication channels between employees and external stakeholders. In the staffing section, the Focus Guide demonstrated its commitment to hiring by showing its projected staffing levels for various key positions throughout LB&I. Lastly, in the section entitled "Equity, Diversity and Inclusion," LB&I affirmed its commitment to building and maintaining a diverse and inclusive workforce where employees are welcomed, supported and motivated to do their best.

IRS Launches High-Income Audit Initiative

Despite challenges posed by COVID-19, the IRS is proceeding with the rollout of its high-income audit initiative that was announced in June.

In June, the IRS announced plans to increase audits on high net worth individuals. The new initiative is a joint effort between the Large Business and International Division ("LB&I") and the Small Business/ Self-Employed Division ("SB/SE").

Holly Paz, Director, Pass-Through Entities Practice Area for LB&I, addressed the initiative during a virtual program hosted by the UCLA Extension Tax Controversy Institute.[9] According to Paz, the IRS has launched its first several hundred exams under the initiative which will target high income taxpayers and will look at large, unusual or questionable items.

The new high-income audit initiative is distinct from the ongoing global high-wealth audits. The high-income initiative is for taxpayers under the threshold of wealth represented by the global high-wealth program.

Generally, taxpayers will not be advised that their tax return was selected as part of the new high-income audit initiative. Also, agents conducting the examination may not be located in the same city as the taxpayer, which means many of the exams will be conducted remotely.

According to Paz, LB&I high-income audit initiative cases will include at least one related entity, for example a partnership or S corporation, which could expand based on risk assessment, Paz said. For SB/SE, high-income audit initiative cases an agent may consider related entities and could also expand the examination.[10]

While the IRS has offered little insight into why it commenced the high-income initiative, it may be in response to the Inspector General of the US Department of Treasury's report issued on May 29, 2020 entitled *High-Income Nonfilers Owing Billions of Dollars Are Not Being Worked by the Internal Revenue Service*.[11] The report questioned the effectiveness of the Service's efforts in addressing noncompliance among high-income taxpayers.

IRS Sets Deadline for Temporary Faxing Procedures in FAQs

The IRS updated its FAQ temporary faxing procedures setting a deadline for the faxing of certain Form 1139, *Corporation Application for Tentative Refund*, and Form 1045, *Application for Tentative Refund*.[12]

On April 13, 2020, the IRS issued temporary faxing procedures via FAQs published on its website, allowing claims under Sections 2303 and 2305 of the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") that made on Form 1139 and Form 1045.[13]

On October 14, 2020, the IRS issued an additional FAQ, FAQ 21, which set forth a termination date for the temporary procedures. FAQ 21 provides that the last day to fax an eligible refund claim under these procedures is December 31, 2020. The fax numbers will no longer be operation as of midnight EST on December 31, 2020.

Appeals Provides Guidance for Secure Messaging Pilot Program

Appeals recently released a memorandum to all employees concerning a new pilot program that will provide a platform for taxpayers to digitally interact in a secure manner with Appeals.[14] The memorandum contained interim guidance for those Appeals employees identified as volunteer participants in the IRS Taxpayer Digital Communications Secure Messaging (TDC SM) pilot.

The traditional methods used by Appeals to interact with taxpayers are in-person meetings, telephone, fax, correspondence, or WebEx videoconferencing. The memorandum states that these methods can be cumbersome, and

---

[9]Andrew Verlarde, Details on High-Income Audit Initiative's Scope and Timing Emerge, *Tax Notes*, October 26, 2020
[10] *Id.*
[11] Treasury Inspector General for Tax Administration, *High-Income Nonfilers Owing Billions of Dollars Are Not Being Worked by the Internal Revenue Service*, 2020-30-015, May 29, 2020
[12] *See* https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19
[13] CARES Act (P.L. 116-136).
URL: https://www.taxnotes.com/lr/resolve/2cbkn
[14] IG Memorandum AP-08-1020-0020 (Oct. 2, 2020)

limit effectiveness and productivity. As a result, TDC SM is being piloted by Appeals with the goal of offering taxpayers and Appeals personnel a more rapid and secure means of communication than the traditional methods

The use of the TDC SM platform will be initiated by the Appeals pilot participants. Taxpayers and their representatives will utilize the TDC SM platform only at the invitation of Appeals personnel.

Participating taxpayers must provide their consent to receiving information via the TDC SM platform. An email will be sent to the taxpayer asking them to login into their secure accounts. TDC SM will allow pilot participants to then correspond with taxpayers or their representatives through their web browser at their own convenience, submit electronic documentation quickly and securely, with the goal of allowing issues to be resolved sooner.